



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,660	12/06/2001	Richard Murray	018501-000711US	5788

27194 7590 08/10/2004

HOWREY SIMON ARNOLD & WHITE, LLP  
C/O M.P. DROSOS, DIRECTOR OF IP ADMINISTRATION  
2941 FAIRVIEW PK  
BOX 7  
FALLS CHURCH, VA 22042

EXAMINER

NICKOL, GARY B

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

*Election/Restrictions*

The reply filed 04/15/04 in response to the letter mailed 03/24/04 has been entered and received. Applicants have fixed the sequence error in the claim. However, the claims remain withdrawn for the following reasons with a new 30-day response period. The examiner apologizes for the oversight in not addressing these concerns earlier.

Newly amended claims 1-11 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly presented claims 1-11 present additional steps (steps a and b) that encompass the *diagnosis* of an angiogenesis activity in a patient based on the *amount* of expression in tissue samples. In contrast, the originally elected and examined invention was solely drawn to a method of detecting a nucleic acid molecule (SEQ ID NO:41) in the cell of a patient, restricted and classified in Class 435, subclass 6. Hence, the newly presented claims comprise a materially distinct method which differs in the objectives, the method steps, the response variables, and the criteria for success; all of which would have been restricted from the other independent groups had they been earlier presented.

Since applicant has received an action on the merits for the **originally presented invention**, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-11 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Art Unit: 1642

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE. However, the date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary B. Nickol Ph.D. whose telephone number is 571-272-0835. The examiner can normally be reached on M-Th, 8:30-5:30; alternate Fri., 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1642

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary B. Nickol Ph.D.  
Primary Examiner  
Art Unit 1642

GBN  
August 5, 2004



**GARY B. NICKOL, PH.D.**  
**PRIMARY EXAMINER**